

REMARKS

The Examiner's indication that claims 1 and 3-13 contained allowable subject matter has been noted with appreciation.

Claim 1 has been revised to be generic to original claims 1, 2 and 3 while providing greater clarity without limiting what was the scope of those claims. As apparent from those original claims, homogenization is effected and either pasteurization and/or sterilization is also effected, and these steps can be carried out in any order.

The claims has also been amended to separate into new claims subgeneric aspects from claims recited the generic aspect and to provide antecedent basis where appropriate. Also, some new claims finding basis in the claims already being considered have been presented for consideration by the Examiner.

It is respectfully submitted that all of the claims as amended herein comply with the requirements of 35 U.S.C. § 112.

The only prior art rejection in this case was directed to the claims reciting homogenization and autoclaving at a temperature of at least 120°C for 5-15 minutes and was based on 35 U.S.C. § 103 over Nishio. It is respectfully submitted that this rejection should be withdrawn.

In the first instance, it is respectfully pointed out that Nishio does not teach or suggest an isomaltulose-containing enteral nutrient. Instead, the reference relates to a caramel. As pointed out on page 1 of the present application, an enteral nutrient is a nutrient which is supplied either orally or gastrointestinally to a patient or consumer

without decomposition taking place in the user's mouth or pharynx. Such nutrients are, because of this, in the form of a solution or suspension, as a rule. Caramels are materials which decompose in the user's mouth or pharynx and thus do not constitute an enteral nutrient. The record is barren of any teaching or suggestion of making caramels and enteral nutrients in the same matter or provide the motivation to do so. [While not strictly necessary because of the recognition of allowability of claims, the statement that the reference discloses an enteral nutrient in the section entitled "Allowable subject Matter" is respectfully traversed.]

As recognized by the Examiner, while Nishio teaches a process of making a caramel which involves heating, it does not teach or suggest sterilization. With specific respect to autoclaving at 120°C or more for 5-15 minutes, as recited in rejected claim 2, the Examiner's attention is invited to Example 3 in the application. It is there shown that when autoclaving under pressure, raising the temperature only 6°C while reducing the autoclaving time reduced the isomaltulose decomposition from 40% to 35%. This is clearly a surprising and unexpected result.

It is respectfully submitted that no further rejection based on Nishio is appropriate.


With respect to other formal matters, it is noted that the claim to foreign priority and receipt of the priority documents has not yet been made. It is respectfully request that this be done in the next communication from the PTO. It is also noted that three IDS citations were crossed out, apparently for lack of a date on the listing form. It is respectfully submitted that this is not a valid basis for refusing to consider these references, especially since their dates were apparent from the material submitted. For the convenience of the Examiner, an art listing form is attached hereto with a better recitation of the biographical information of references CA and CH. Citation No. CB is

not included because designating this as an EP reference was in error and CB actually corresponds to the citation the Examiner has made as Nishio.

In view of the above amendment, applicants believe the pending application is in condition for allowance.

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Respectfully submitted,

By 

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